

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE: BENICAR (OLMESARTAN)
PRODUCTS LIABILITY LITIGATION

THIS DOCUMENT RELATES TO
ALL CASES

)
) MDL 2606
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) JUDGE ROBERT B. KUGLER
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) MAG. JUDGE JOEL SCHNEIDER
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**CASE MANAGEMENT ORDER NO. 32 REGARDING SETTLEMENT
AGREEMENT AND DEADLINES**

This Court is advised that defendants Daiichi Sankyo, Inc., Daiichi Sankyo U.S. Holdings Company, Daiichi Sankyo Co. Ltd. (collectively, “Daiichi Sankyo”), defendants Forest Laboratories, Inc., now known as Forest Laboratories, LLC, Forest Research Institute, Inc., and Forest Pharmaceuticals, Inc. (collectively “Forest”) (Daiichi Sankyo and Forest, collectively “Defendants”) and a committee of plaintiffs’ counsel (“Plaintiffs’ Negotiating Committee” or “PNC”) have negotiated a Master Settlement Agreement (“Agreement”) to resolve claims against the Defendants involving certain injuries alleged to have resulted from the use on or prior to May 1, 2015 by claimants of Olmesartan Products (including the medications Benicar, Benicar HCT, Azor and Tribenzor).

The Agreement, which will be made available online at www.OlmesartanProductLitigationSettlement.com, is a private settlement agreement to establish a program (the “Olmesartan Products Resolution Program” or “Program”) for the settlement of cases alleging a personal injury, pending as of August 1, 2017, in this MDL No. 2606, in other federal courts but not yet transferred into MDL No. 2606 (“Other Federal Court Cases”), in the New Jersey Coordinated Proceeding (“New Jersey Coordinated Cases”), or in any state court (“Other State Court Cases”), and any unfiled claims for which there is no case pending against

Defendants in federal or state court on or before August 1, 2017, but for which claimants provide notice to Defendants and the PNC in accordance with the terms of the Agreement, in which claimant alleges the use of Olmesartan Products on or prior to May 1, 2015, and an injury resulting from the use of such Olmesartan Products, provided that such claimants with unfiled claims must have signed a retainer agreement with an attorney for legal representation relating to that claim on or before 11:59 pm Eastern Daylight Time on August 23, 2017 (“Unfiled Claims”).

I. AUTHORITY OF COURT TO OVERSEE SETTLEMENT

This Court has authority to enter Orders establishing time frames for the completion of acts defined in the Agreement. Fed. R. Civ. P. 16(a)(5), (d); *see also In re Vioxx Prods. Liab. Litig.*, 650 F. Supp. 2d 549, 553 (E.D. La. 2009). The instructions herein are to be construed as the orders of this Court.

II. NOTICE TO MDL PLAINTIFFS

All plaintiffs with cases pending in MDL No. 2606 on the date of the entry of this Order shall be given notice of this Order and of the Agreement.

III. CASE MANAGEMENT ORDER REGARDING CENSUS OF CLAIMS

As defined in this Court’s Case Management Order Regarding Census of Claims, on or before August 25, 2017, responses shall be served to provide the required Census of all filed and unfiled claims in which Primary Counsel has an Interest, as those terms are defined in that Order.

IV. ENROLLMENT OF PLAINTIFFS WITH PENDING CLAIMS

Under the terms of the Agreement establishing the Olmesartan Products Resolution Program, Plaintiffs with claims pending in this MDL No. 2606, Other Federal Court Cases, New Jersey Coordinated Cases, or Other State Court Cases on or prior to August 1, 2017 who allege an injury resulting from the use of Olmesartan Products taken by such plaintiffs on or prior to May 1, 2015 (collectively, “Eligible Plaintiffs”) are permitted to enroll in, and be bound by the

terms of, the Olmesartan Products Resolution Program. Plaintiffs with cases that were dismissed with prejudice on or prior to August 1, 2017 are not Eligible Plaintiffs. Eligible Plaintiffs who intend to participate in the Olmesartan Products Resolution Program must submit an “Opt In Package for Filed Claims,” which includes a “Notice of Intent to Opt In Form for Filed Claims,” a Stipulation of Dismissal of the plaintiff’s pending claim, and a Release of Claims in the form attached to the agreement, by the “Opt-In Deadline” set forth in this Order (and extended as applicable under the terms of the Agreement).

Pursuant to the terms of the Agreement, Eligible Plaintiffs who elect to enroll in the Program and submit an Opt In Package for Filed Claims must submit a complete Claim Package, as detailed in the Agreement, by the Claim Package Deadline (which may be extended as appropriate to the Cure Deadline) to be eligible to be considered for an award under the Olmesartan Products Resolution Program. Enrollment in the Program is irrevocable, and the claims of Eligible Plaintiffs who submit Opt In Package for Filed Claims, but who do not timely submit a complete Claim Package, will not be eligible to receive any compensation under the Program and such Plaintiffs’ cases will be dismissed with prejudice with the filing of the Stipulation of Dismissal submitted with the Opt In Package for Filed Claims, or subject to dismissal with prejudice by a motion by Defendants for dismissal with prejudice.

Each judge presiding over the claims of such Eligible Plaintiffs shall retain jurisdiction over those cases, including jurisdiction over the termination of Plaintiffs’ rights to sue Defendants in those cases.

V. ENROLLMENT OF UNFILED CLAIMS

As set forth in the Agreement, any person who alleges an injury occurring in the United States on or prior to August 1, 2017 resulting from the use of Olmesartan Products taken by such

person on or prior to May 1, 2015, and who retained counsel for legal representation relating to such alleged injury on or prior to 11:59 pm Eastern Daylight Time on August 23, 2017, but who did not have a case pending against Defendants in state or federal court on or before August 1, 2017, shall be eligible for participation in the Olmesartan Products Resolution Program upon timely submission to Daiichi Sankyo of an “Opt In Package for Unfiled Claims” Agreement (“Unfiled Claimants”). As detailed in the Agreement, the Opt In Package for Unfiled Claims must include: (i) a notification of the claimant’s unfiled claim and intent to opt in to the Program (“Notice of Intent to Opt In Form for Unfiled Claims”), (ii) a declaration signed by the claimant’s counsel affirming that the claimant (or the claimant’s personal representative) had signed a retainer agreement with that attorney or with his or her law firm on or prior to 11:59 pm Eastern Daylight Time on August 23, 2017, for legal representation of said claimant relating to an injury allegedly resulting from the use of Olmesartan Products (“Declaration of Counsel”), and (iii) a Release of Claims in the form attached to the Agreement. Opt In Packages for Unfiled Claims must be submitted by the “Opt In Deadline” set forth in this Order (and extended as applicable under the terms of the Agreement).

All Unfiled Claimants (as defined above and set forth in the terms of the Agreement) who timely submit an Opt In Package for Unfiled Claims pursuant to the Agreement are enrolled in, and bound by the terms of, the Olmesartan Products Resolution Program. Under the terms of the Agreement, Unfiled Claimants enrolled in the Program must submit a complete Claim Package, as detailed in the Agreement by the Claim Package Deadline (which may be extended as may be appropriate to the Cure Deadline) to be eligible to be considered for an award under the Olmesartan Products Resolution Program.

Pursuant to the terms of the Agreement, enrollment in the Program is irrevocable, and Unfiled Claimants who do not timely submit a complete Claim Package will not be eligible to receive any compensation under the Program.

VI. OLMESARTAN PRODUCTS RESOLUTION PROGRAM DEADLINES

<u>11:59 p.m. E.T. on August 25, 2017</u> (the “Census Order Deadline”)	Date by which Primary Counsel shall serve responses regarding filed and unfiled claims in accordance with this Court’s Case Management Order Regarding Census of Claims.
<u>11:59 p.m. E.T. on September 15, 2017</u> (the “Opt In Deadline”)	Date by which Eligible Plaintiffs and Unfiled Claimants may elect to participate in the Olmesartan Products Resolution Program by submitting the Opt In Package for Filed Claims or the Opt In Package for Unfiled Claims, as applicable, pursuant to the terms of the Agreement. This date may be further extended by written agreement of the PNC and Defendants.
<u>11:59 p.m. E.T. on the thirtieth (30th day) following the last day of the final Opt-In Deadline attributable to any Program Participant</u> (the “Effective Date”)	Date by which Daiichi Sankyo may exercise its termination right under the Agreement. If Daiichi Sankyo’s termination right under the Agreement expires without previously having been exercised, this date shall become the Effective Date of the Agreement.
<u>11:59 p.m. E.T. on the thirtieth (30th) day following the Effective Date</u> (the “Claim Package Deadline”)	Date by which Olmesartan Products Resolution Program Participants may submit Claim Packages seeking an award under the Olmesartan Products Resolution Program.
<u>Thirty (30) days after Notice sent by Claims Administrator notifying of Claims Package deficiencies</u> (the “Cure Deadline”)	Date by which an Olmesartan Products Resolution Program Participant must cure deficiencies in his or her Claim Package.

VII. FORM SUBMISSION

Notice of Intent to Opt In Packages for Filed Claims, Opt In Packages for Unfiled Claims and Claim Packages must be submitted online at www.OlmesartanProductLitigationSettlement.com, in accordance with instructions provided therein by the Claims Administrator. Counsel and Claimants shall use the forms provided by the Claims Administrator to submit Enrollment and Claim Package materials and shall not attempt to use any of the sample forms attached as appendices to the Master Settlement Agreement or any other form/method of submission. Submissions not made in accordance with the instructions of the Claims Administrator will not be accepted.

VIII. APPOINTMENT OF SPECIAL MASTER

The Court, by this Order, appoints Judge Marina Corodemus to serve as Special Master under the terms of Agreement, and directs that all applications to dismiss claims for a failure to comply with the terms of the Agreement shall be heard by Judge Corodemus, who shall make a recommendation to this Court on the resolution of any motions specified in this Agreement.

THUS DONE AND SIGNED in Camden, New Jersey, this 1st day of August, 2017.

A handwritten signature in black ink, appearing to read "R. B. Kugler", written over a horizontal line.

HONORABLE ROBERT B. KUGLER
UNITED STATES DISTRICT COURT